

### **REMARKS**

In the Office Action, correction of the abstract and title were required. Further, claims 1, 2, 7, 8, 11, and 13-21 were rejected under 35 U.S.C. § 102(b) and claims 3-6, 9, 10, 12, and 22-27 were rejected under 35 U.S.C. § 103(a).

Claims 1, 11, 18, and 22 have been amended and claims 19-20 and 25-26 have been canceled. Support for the amendments of claims 1, 11, 18, and 22 can be found at paragraph [045] of the application as filed.

Claims 1-18, 21-24, and 27 are currently pending in the present application.

### **Specification**

Correction of the Abstract was required. Thus, the Abstract has been amended as set forth herein. It is respectfully submitted that the Abstract, as amended, contains the proper content.

Correction of the Title was required. Thus, the Title has been amended as set forth herein. It is respectfully submitted that the Title, as amended, is clearly indicative of the invention to which the claims are directed.

### **§102 Rejections**

Claims 1, 2, 7, 8, 11 and 13-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,553,669 to Butterworth *et al.* (hereinafter "Butterworth"). Applicants respectfully disagree.

#### *Claim 1 Is Not Anticipated by Butterworth*

Claim 1, as amended, is directed to a collection container comprising, in part, a "collection body comprising a porous composition configured to allow a substantially free flow of fluid therethrough."

Butterworth, in contrast, fails to teach or suggest the invention of claim 1. Instead, Butterworth discloses a container for sterilization of medical items that is "made entirely of resin-treated, fluid repellent, semi-rigid nonwoven material," that permits steam penetration but prevents entry of bacteria. Butterworth, Abstract. Further, Butterworth states that "[i]n contrast to a woven fabric which has a comparatively large pore size, a nonwoven has a larger number of much smaller pores with no line-of-sight porosity." Id. at col. 4, ll. 22-25. That is, Butterworth

teaches a container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Clearly, such a container does not allow a free flow of fluid therethrough. Thus, Butterworth fails to teach or suggest a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

*Claims Depending From Claim 1 Are Patentable*

Because claims 2-10 depend directly or indirectly from claim 1 and incorporate all the limitations of claim 1, the above argument obviates the basis for this ground of rejection. Thus, claims 2-10 are not anticipated by Butterworth. Reconsideration and withdrawal of the rejections is respectfully requested.

*Claim 11 Is Not Anticipated by Butterworth*

Claim 11, as amended, is directed to a collection container comprising, in part, a “collection body comprising a porous composition configured to allow a substantially free flow of fluid therethrough.”

Butterworth, in contrast, fails to teach or suggest the invention of claim 11. As discussed above, Butterworth teaches a container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Thus, Butterworth fails to teach or suggest the invention of claim 11. Reconsideration and withdrawal of the rejection is respectfully requested.

*Claims Depending From Claim 11 Are Patentable*

Because claims 12-17 depend directly or indirectly from claim 11 and incorporate all the limitations of claim 11, the above argument obviates the basis for this ground of rejection. Thus, claims 12-17 are not anticipated by Butterworth. Reconsideration and withdrawal of the rejections is respectfully requested.

*Claim 18 Is Not Anticipated by Butterworth*

Claim 18, as amended, is directed to a collection container comprising, in part, a collection body comprising “a porous composition configured to allow a substantially free flow of fluid therethrough.”

Butterworth, in contrast, fails to teach or suggest the invention of claim 18. As discussed above, Butterworth teaches a container made of a nonwoven material with no line-of-sight

porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Thus, Butterworth fails to teach or suggest the invention of claim 18. Reconsideration and withdrawal of the rejection is respectfully requested.

*Claim Depending From Claim 18 Are Patentable*

Because claim 21 depends directly from claim 18 and incorporates all the limitations of claim 18, the above argument obviates the basis for this ground of rejection. Thus, claim 21 is not anticipated by Butterworth. Reconsideration and withdrawal of the rejection is respectfully requested.

**§ 103 Rejections**

Claims 3 through 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Butterworth in view of U.S. Patent No. 5,161,681 to Kemp *et al.* (hereinafter “Kemp”). Further, claims 9 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Butterworth in view of U.S. Patent No. 6,371,642 to Nelson *et al.* (hereinafter “Nelson”). In addition, claims 10 and 22-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Butterworth in view of U. S. Patent No. 3,468,471 to Linder (“Linder”). Applicants respectfully disagree.

*Claim 1 Is Not Made Obvious by Butterworth in View of Kemp*

As discussed above, claim 1 is directed to a collection container comprising, in part, a “collection body comprising a porous composition configured to allow a substantially free flow of fluid therethrough.”

As also discussed above, Butterworth fails to teach or suggest the invention of claim 1. Instead, Butterworth discloses a container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Thus, Butterworth fails to teach or suggest a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1.

Kemp fails to remedy the deficiencies of Butterworth. As noted in the Office Action, Kemp discloses a square cap body and that the cap can be any desirable shape that possesses flat surfaces. Kemp fails to teach or suggest a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1.

Further, the combination of Butterworth and Kemp fails to teach or suggest the invention of claim 1. At best, the Butterworth and Kemp combination provides a square or non-circular container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Nothing in Butterworth or Kemp teaches or suggests a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1.

Thus, neither Butterworth nor Kemp, alone or in combination, teach or suggest the invention of claim 1.

*Claims Depending From Claim 1 Are Patentable*

Because claims 2-10 depend directly or indirectly from claim 1 and incorporate all the limitations of claim 1, the above argument obviates the basis for this ground of rejection. Thus, claims 2-10 are not made obvious by Butterworth in view of Kemp. Reconsideration and withdrawal of the rejections is respectfully requested.

*Claims 9 and 12 Are Not Made Obvious by Butterworth in View of Nelson Because Butterworth Teaches Away from the Combination with Nelson*

As the Examiner knows, “[i]n determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed . . . combination.” In re Linter, 458 F.2d 1013, 1016 (CCPA 1972). It is respectfully submitted with respect to the asserted combination of Butterworth and Nelson that not only do the teachings not appear to be sufficient to make the proposed combination, but that Butterworth expressly teaches away from any combination with the teachings of Nelson.

Butterworth teaches away from the combination with Nelson, and thus the combination is improper, because Butterworth teaches a *sterilization* container.. As the Examiner knows, prior art which would “discourage” one of skill in the art from attempting the claimed combination cannot validly support an obviousness rejection. See Gillette Co. v. S.C. Johnson & Sons, Inc., 16 U.S.P.Q.2d 1923, 1927-28 (Fed. Cir. 1990). As noted above, Butterworth discloses a container for *sterilization* of medical items that is “made entirely of resin-treated, fluid repellent, semi-rigid nonwoven material,” that permits steam penetration but *prevents entry of bacteria*. Butterworth, Abstract (emphasis added). In fact, the title of the Butterworth patent includes the

words “*Sterilization Container*” (emphasis added). Thus, Butterworth requires a container that maintains a sterile environment.

In contrast, Nelson does not teach or suggest sterilization. Instead, Nelson discloses a mesh bag for holding small kitchen items to be washed in a dishwasher. See Nelson, Abstract. The mesh body is intended solely for use in “containment of small lightweight items that might have a tendency to become airborne due to the force of the water sprays associated with normal dishwasher operation.” Id. at col. 1, l. 65 – col. 2, l. 2. The mesh bag, therefore, is not intended to, nor configured to, maintain a sterile environment within the bag.

Butterworth, therefore, teaches away from a combination with Nelson. Butterworth teaches a container that maintains the sterility of its contents. A container resulting from a combination of Butterworth and Nelson would have a mesh composition that would not maintain the sterility of its interior. Thus, there is not only a lack of motivation to combine the two references, but there is a teaching away from such a combination. Reconsideration and withdrawal of the rejections of claims 9 and 12 is respectfully requested.

*Claims 9 and 12 Are Not Made Obvious by Butterworth in View of Nelson Because the Intended Function of Butterworth Would be Destroyed*

The proposed combination of Butterworth and Nelson is improper, because the combination would result in an inoperable device. As noted above, Butterworth requires a container that maintains a sterile environment. In contrast, the Nelson device does not maintain an sterile environment. The proposed combination of the two references would result in a container with a mesh composition allowing easy entrance bacteria and other sterility-destroying objects, thereby destroying the intended function of Butterworth. As such, the proposed combination is improper, and reconsideration and withdrawal is respectfully requested.

*Claim 1 Is Not Made Obvious by Butterworth in View of Linder*

As discussed above, claim 1 is directed to a collection container comprising, in part, a “collection body comprising a porous composition configured to allow a substantially free flow of fluid therethrough.”

As also discussed above, Butterworth fails to teach or suggest the invention of claim 1.

Linder fails to remedy the deficiencies of Butterworth. As noted in the Office Action, Linder discloses a sterile package for articles. Linder fails to teach or suggest a “porous

composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1.

Further, the combination of Butterworth and Linder fails to teach or suggest the invention of claim 1. At best, the Butterworth and Linder combination provides a sterile package for packaging a container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Nothing in Butterworth or Linder teaches or suggests a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 1.

Thus, neither Butterworth nor Linder, alone or in combination, teach or suggest the invention of claim 1.

*Claims Depending From Claim 1 Are Patentable*

Because claims 2-10 depend directly or indirectly from claim 1 and incorporate all the limitations of claim 1, the above argument obviates the basis for this ground of rejection. Thus, claims 2-10 are not made obvious by Butterworth in view of Linder. Reconsideration and withdrawal of the rejection is respectfully requested.

*Claim 22 Is Not Made Obvious by Butterworth in View of Linder*

Claim 22 is directed to a collection package having a container comprising, in part, a “collection body comprising a porous composition configured to allow a substantially free flow of fluid therethrough.”

As discussed above, Butterworth fails to teach or suggest a porous composition configured to allow a substantially free flow of fluid therethrough. Thus, Butterworth fails to teach or suggest the invention of claim 22.

Linder fails to remedy the deficiencies of Butterworth. As noted in the Office Action and above, Linder discloses a sterile package for articles. Linder fails to teach or suggest a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 22.

Further, the combination of Butterworth and Linder fails to teach or suggest the invention of claim 22. At best, the combination provides a sterile package for packaging a container made of a nonwoven material with no line-of-sight porosity that is resistant to transmission of bacteria such that the container can maintain a sterile environment for sterilized medical items. Nothing

in Butterworth or Linder teaches or suggests a “porous composition configured to allow a substantially free flow of fluid therethrough” as claimed in claim 22.

Thus, neither Butterworth nor Linder, alone or in combination, teach or suggest the invention of claim 22. Reconsideration and withdrawal of the rejection is respectfully requested.

*Claims Depending From Claim 22 Are Patentable*

Because claims 23 and 27 depend directly or indirectly from claim 22 and incorporate all the limitations of claim 22, the above argument obviates the basis for this ground of rejection. Thus, claims 23 and 27 are not made obvious by Butterworth in view of Linder. Reconsideration and withdrawal of the rejections is respectfully requested.

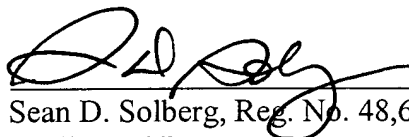
**CONCLUSION**

This application now stands in allowable form and reconsideration and allowance is respectfully requested.

Respectfully submitted,

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